

04-980 BROWN, WARDEN V. SANDERS

DECISION BELOW: 373 F.3D 1054 (9TH CIR. 2004)

QUESTIONS PRESENTED

1. Is the California death penalty statute a "weighing statute" for which the state court is required to determine that the presence of an invalid special circumstance was harmless beyond a reasonable doubt as to the jury's determination of penalty?
2. ~~Was an affirmative answer to the previous question dictated by precedent pursuant to *Teague v. Lane*, 489 U.S. 288 (1989), at the time the conviction in this case was final?~~
3. If an affirmative answer to the first question was dictated by precedent, was it necessary for the state supreme court to specifically use the phrases "harmless error" or "reasonable doubt" in determining that there was no "reasonable possibility" that the invalid special circumstance affected the jury's sentence selection?

Cert. Granted 3/28/05

Limited to Questions 1 and 3